



VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY

NORTHERN REGIONAL OFFICE
13901 Crown Court, Woodbridge, Virginia 22193
(703)583-3800
www.deq.virginia.gov

Matthew J. Strickler
Secretary of Natural Resources

David K. Paylor
Director
(804) 698-4000

Thomas A. Faha
Regional Director

**STATE WATER CONTROL BOARD
ENFORCEMENT ACTION - ORDER BY CONSENT
ISSUED TO
Sumner Hood LLC
FOR
Royal Farms Route One and Hood Drive
Unpermitted Activity**

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, between the State Water Control Board and Sumner Hood LLC, regarding the Royal Farms Route One and Hood Drive construction site, for the purpose of resolving certain violations of the State Water Control Law and the applicable regulations.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "2014 Permit" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, No. VAR10, promulgated at 9 VAC 25-880-70, which was issued under the State Water Control Law, the VSMP Regulations, and the General Permit Regulation on July 1, 2014 and which expires on June 30, 2019.

3. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia, as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Construction activity" means any clearing, grading or excavation resulting in land disturbance of equal to or greater than one acre, or disturbance of less than one acre of total land area that is part of a larger common plan of development or sale if the larger common plan will ultimately disturb equal to or greater than one acre.
5. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
6. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
7. "Discharge" means the discharge of a pollutant.
8. "Discharge of a pollutant" means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
9. "General Permit Regulation" means the General VPDES Permit for Discharges of Stormwater from Construction Activities, 9 VAC 25-880-1 et seq.
10. "Land disturbance" or "land-disturbing activity" means a man-made change to the land surface that potentially changes its runoff characteristics including clearing, grading, or excavation, except that the term shall not include those exemptions specified in Va. Code § 62.1-44.15:34.
11. "Notice of Violation" or "NOV" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
12. "NRO" means the Northern Regional Office of DEQ, located in Woodbridge, Virginia.
13. "Order" means this document, also known as a "Consent Order" or "Order by Consent," a type of Special Order under the State Water Control Law.
14. "Pollutant" means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 U.S.C. § 2011 et seq.)), heat, wrecked or discarded equipment, rock, sand,

cellar dirt and industrial, municipal, and agricultural waste discharged into water. . . .” 9 VAC 25-870-10.

15. “Pollution” means “such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are ‘pollution.’” Va. Code § 62.1-44.3.
16. “Registration Statement” means a registration statement for coverage under the 2014 Permit.
17. “Runoff volume” means the volume of water that runs off the site from a prescribed design storm. 9 VAC 25-870-10.
18. “Site” means the Royal Farms Route One and Hood Drive Site located at 5301 Jefferson Davis Highway, Fredericksburg, Spotsylvania County, Virginia.
19. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 et seq.) of Title 62.1 of the Va. Code.
20. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
21. “Stormwater” means precipitation that is discharged across the land surface or through conveyances to one or more waterways and that may include stormwater runoff, snow melt runoff, and surface runoff and drainage. Va. Code § 62.1-44.15:24.
22. “Stormwater management plan” means a document or series of documents containing material describing methods for complying with the requirements of a VSMP or the VSMP Regulations. 9 VAC 25-870-10.
23. “Sumner Hood” means Sumner Hood LLC, a company authorized to do business in Virginia. Sumner Hood is a “person” within the meaning of Va. Code § 62.1-44.3.
24. “SWPPP” means Stormwater Pollution Prevention Plan, which is a document that is prepared in accordance with good engineering practices and that identifies potential

sources of pollutants that may reasonably be expected to affect the quality of stormwater discharges. A SWPPP required under a VSMP for construction activities shall identify and require the implementation of control measures, and shall include, but not be limited to the inclusion of, or the incorporation by reference of an approved erosion and sediment control plan, an approved stormwater management plan, and a pollution prevention plan. 9 VAC 25-870-10.

25. "Virginia Stormwater Management Act" means Article 2.3 (§ 62.1-44.15:24 et seq.) of Chapter 3.1 of Title 62.1 of the Va. Code.
26. "Va. Code" means the Code of Virginia (1950), as amended.
27. "VAC" means the Virginia Administrative Code.
28. "VPDES" means Virginia Pollutant Discharge Elimination System.
29. "VSMP" means the Virginia Stormwater Management Program, which is a program approved by the Soil and Water Conservation Board after September 13, 2011, and until June 30, 2013, or the State Water Control Board on and after June 30, 2013, that has been established by a VSMP authority to manage the quality and quantity of runoff resulting from land-disturbing activities and shall include such items as local ordinances, rules, permit requirements, annual standards and specifications, policies and guidelines, technical materials, and requirements for plan review, inspection, enforcement, where authorized in this article, and evaluation consistent with the requirements of this article and associated regulations. Va. Code § 62.1-44.15:24.
30. "VSMP authority" means an authority approved by the Board after September 13, 2011, to operate a VSMP or, until such approval is given, the Department. An authority may include a locality; state entity, including the Department; federal entity; or for linear projects subject annual standards and specifications in accordance with subsection B of § 62.1-44.15-31, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102. Va. Code § 62.1-44.15:24.
31. "VSMP authority permit" means an approval to conduct a land-disturbing activity issued by the VSMP authority for the initiation of a land-disturbing activity after evidence of State Permit coverage has been provided where applicable. Va. Code § 62.1-44.15:24.
32. "VSMP Regulations" means the Virginia Stormwater Management Program (VSMP) Regulations, 9 VAC 25-870-10 et seq.
33. "Warning Letter" or "WL" means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Sumner Hood LLC owns the Site located in Spotsylvania County, Virginia.
 - a. Effective November 19, 2018, Sumner Hood purchased the property and simultaneously leased the land to Two Farms, Inc., the legal entity of Royal Farms Stores.
 - b. Two Farms, Inc. entered into a construction contract with Graybeale Construction, Inc. (Graybeale), which effectively put all land disturbance and construction activities under the control of Graybeale.
2. Spotsylvania County is the VSMP authority for the Site.
3. On March 8, 2018, Sumner Hood applied for coverage under the 2014 Permit. The application was submitted to Spotsylvania County.
4. The March 8th application registration statement submitted by Sumner Hood stated that the receiving water for stormwater discharges from the Site is Massaponax Creek via a Municipal Separate Storm Sewer System (MS4) operated by the Virginia Department of Transportation.
5. Massaponax Creek, located in the Rappahannock River Basin, is a surface water located wholly within the Commonwealth and is a "state water" under the State Water Control Law.
6. On March 21, 2019, DEQ staff conducted an inspection of the Site and observed that land-disturbing activities greater than one acre had occurred at the Site in an area subject to stormwater runoff.
7. At the time of DEQ's inspection in March 2019, coverage under the 2014 Permit had not yet been granted by DEQ for the Site, and no other certificate or permit was issued for the discharge of stormwater from construction activities at the Site.

As described below in paragraph C(19):

- a. Sumner Hood explained it was under the impression that permit coverage for stormwater discharges had been issued at the time of other permit issuances from Spotsylvania County; and
- b. DEQ was informed at a later date after the March 2019 inspection, that Spotsylvania County had failed to transmit Sumner Hood's permit application registration statement to DEQ after it was received by Spotsylvania County in March 2018.

8. During the March 2019 inspection, DEQ staff observed sediment laden stormwater flowing from the Site and discharging directly to a stormsewer alongside Jefferson Davis Highway (Route 1). The stormsewer discharges to state waters.
9. Va. Code § 62.1-44.5(A) states in part: "Except in compliance with a certificate or permit issued by the Board or other entity authorized by the Board to issue a certificate or permit pursuant to this chapter, it shall be unlawful for any person to . . . [d]ischarge stormwater into state waters from . . . land disturbing activities."

9 VAC 25-870-310(A) also states: "Except in compliance with a state permit issued by the board pursuant to the Virginia Stormwater Management Act, it shall be unlawful for any person to discharge stormwater into state waters from . . . land-disturbing activities."

Va. Code §§ 62.1-44.15:24 and -44.15:34 define "land-disturbing activity" and describe regulated land-disturbing activities (including exemptions), respectively.

10. DEQ was not notified of any unpermitted/unauthorized discharges from the Site.
11. 9 VAC 25-870-310(B) states in part: "Any person in violation of subsection A of this section, who discharges or causes or allows a discharge of stormwater into or upon state waters from Municipal Separate Storm Sewer Systems or land-disturbing activities, or who discharges or causes or allows a discharge that may reasonably be expected to enter state waters in violation of subsection A of this section, shall notify the department of the discharge immediately upon discovery of the discharge but in no case later than 24 hours after said discovery. A written report of the unauthorized discharge shall be submitted by the owner, to the department, within five days of discovery of the discharge."
12. During the March 2019 inspection, a Stormwater Pollution Prevention Plan (SWPPP) was not visibly available at the Site, and no notice of the SWPPP's location was posted near the main entrance of the Site.

As described below in paragraph C(21), DEQ was informed at a later date after the March 2019 inspection, that the SWPPP existed and was located in the construction trailer at the Site.

13. 9 VAC 25-870-54(G) states in part: "The SWPPP must be maintained at a central location onsite. If an onsite location is unavailable, notice of the SWPPP's location must be posted near the main entrance at the construction site."
14. During the March 2019 inspection, DEQ staff observed sediment laden stormwater passing through and around the silt fencing and inlet protection measures at the Site. Additionally, as documented in DEQ's inspection report, silt fencing near the corner of the property was observed to be missing during the inspection and appeared to have been intentionally removed for bypass.

15. 9 VAC 25-840-60(A) states in part: "All erosion and sediment control structures and systems shall be maintained, inspected and repaired as needed to insure continued performance of their intended function..."

9 VAC 25-870-54(B) also states in part: "An erosion and sediment control plan consistent with the requirements of the Virginia Erosion and Sediment Control Law and regulations must be designed and implemented during construction activities."

16. On April 19, 2019, DEQ issued Notice of Violation No. SW2019-04-NRO-001 to Sumner Hood LLC as a result of the observations described above in paragraphs C(1) through C(15).
17. On May 2, 2019, DEQ received a written response to the NOV from Graybeale.
18. On May 8, 2019, Department staff met with Sumner Hood, Graybeale, and Graybeale's onsite contractor MEPCO Materials Inc. (Mepco) to discuss the violations and the written NOV response that was submitted to DEQ.
19. At the May 8th meeting, it was explained to DEQ that the failure to obtain Permit coverage was inadvertent because Sumner Hood was under the impression that coverage under the Permit had been granted for the Site when various other permits were issued by Spotsylvania County. The permits issued by Spotsylvania County included: (A) a site plan clearing and grading permit, (B) a demolition permit, (C) a building permit, and (D) an early permit for commercial construction of footing/foundation/slabs.

Sumner Hood stated that it had submitted an application for Permit coverage to Spotsylvania County (the VSMP authority for the Site) on March 8, 2018, anticipating that the County would submit the application to DEQ. However, when various stages of construction approval were granted by Spotsylvania County from August through November of 2018 via the County-issued permits, Sumner Hood's coverage under the 2014 Permit had not yet been granted by DEQ because Spotsylvania County had failed to transmit the application to DEQ.

It was explained to DEQ that a Spotsylvania County inspector came to the Site on April 11, 2019, found no Permit, discovered that the application had not been sent by the County to DEQ, and then sent Sumner Hood's application for Permit coverage to DEQ later that same day, on April 11, 2019.

20. On April 25, 2019, DEQ issued 2014 Permit coverage to Sumner Hood for future discharges of stormwater from construction activities from the Site, assigning it registration number VAR10M428.
 - a. Conversations concerning the permit renewal application process for VAR10M428 were initiated by Sumner Hood on May 16, 2019 in order for permit coverage to continue after the June 30, 2019 expiration of the 2014 Permit. A renewal application was submitted on June 6, 2019. The renewal application listed Two Farms, Inc. as the

- operator, and Sumner Hood and Two Farms, Inc. were instructed by the VSMP authority that a permit transfer would have to be completed in order for DEQ to accept a renewal application with Two Farms, Inc. listed as the operator.
- b. 9VAC25-880-30.H.1 allows for administrative continuation of an expiring permit coverage if a complete registration statement is submitted to the VSMP authority in a timely manner.
 - c. An application requesting transfer of permit registration number VAR10M428 from Sumner Hood to Two Farms, Inc. was received on June 11, 2019, and on June 28, 2019, the transfer request was approved. Subsequently, on the same day as the approved transfer [June 28, 2019], DEQ deemed the permit renewal application for VAR10M428 (with Two Farms, Inc. listed as the operator) complete.
 - d. Based on the above permit renewal information and supporting documentation submitted to the VSMP authority and DEQ, VAR10M428 is administratively continued until Two Farms, Inc. receives coverage under the 2019 Permit.
21. In response to the SWPPP deficiencies described above in paragraphs C(12) and C(13), Sumner Hood and Graybeale explained that the SWPPP actually was onsite during DEQ's March 2019 inspection, but DEQ staff did not make contact with Site personnel during the inspection and thus were not presented with a SWPPP at the time. In support of this explanation, documentation was submitted to DEQ by Graybeale showing that the SWPPP had been prepared in August 2018 and was signed by an authorized representative in January 2019.
22. Based on the results of the March 21, 2019 inspection, the NOV response submitted to DEQ, the meeting between DEQ and representatives of Sumner Hood on May 8, 2019, and post-meeting correspondence and documentation submitted to DEQ, the Board concludes that Sumner Hood violated Va. Code § 62.1-44.5(A), 9 VAC 25-840-60.A, 9 VAC 25-870-54.B, 9 VAC 25-870-54.G, 9 VAC 25-870-310.A, and 9 VAC 25-870-310.B, as described above in paragraphs C(1) through C(21).
23. On April 25, 2019, Spotsylvania County issued a NOV to Sumner Hood and took enforcement action for the failure to obtain permit coverage prior to engaging in land disturbing activity. The County enforcement action included a civil penalty of \$1,675; therefore, the civil charge described below in Section D of this Order does not include a charge for failure to obtain permit coverage.
24. As described above, Sumner Hood has submitted documentation that verifies that the violations described throughout Section C of this Order have been corrected, except for notification of the unpermitted/unauthorized discharge described above in paragraphs C(10) and C(11). For that violation, DEQ does not require any further explanation/submission to resolve because the notification period has passed, the discharge was observed by DEQ staff during the Site inspection performed March 21,

2019, and the discharge was adequately described to DEQ in the NOV response and during the May 8, 2019 meeting.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, 62.1-44.15:25, and 62.1-44.15:48, the Board orders Sumner Hood, and Sumner Hood agrees to pay a civil charge of **\$4,357.50** within 30 days of the effective date of the Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Sumner Hood shall include its Federal Employer Identification Number (FEIN) with the civil charge payment and shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Stormwater Management Fund. If the Department has to refer collection of moneys due under this Order to the Department of Law, Sumner Hood shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend this Order with the consent of Sumner Hood for good cause shown by Sumner Hood, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 et seq., after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order and in NOV No. SW2019-04-NRO-001 dated April 19, 2019. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the site; or (3) taking subsequent action to enforce the Order.
3. For purposes of this Order and subsequent actions with respect to this Order only, Sumner Hood admits to the jurisdictional allegations, and agrees not to contest, but does not admit, the findings of fact and conclusions of law in this Order.
4. Sumner Hood consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.

5. Sumner Hood declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Sumner Hood to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Sumner Hood shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other unforeseeable circumstances beyond its control and not due to a lack of good faith or diligence on its part. Sumner Hood shall demonstrate that such circumstances were beyond its control and not due to a lack of good faith or diligence on its part. Sumner Hood shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:
 - a. the reasons for the delay or noncompliance;
 - b. the projected duration of any such delay or noncompliance;
 - c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
 - d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which the parties intend to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto and any successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Sumner Hood.

11. This Order shall continue in effect until:

- a. The Director or his designee terminates the Order after Sumner Hood has completed all of the requirements of the Order;
- b. Sumner Hood petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
- c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Sumner Hood.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Sumner Hood from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Sumner Hood and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Sumner Hood certifies that he or she is a responsible official or officer authorized to enter into the terms and conditions of this Order and to execute and legally bind Sumner Hood to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Sumner Hood.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Sumner Hood voluntarily agrees to the issuance of this Order.

And it is so ORDERED this _____ day of _____, 2019.

Thomas A. Faha, Regional Director
Department of Environmental Quality

------(Remainder of Page Intentionally Blank)-----

Sumner Hood LLC voluntarily agrees to the issuance of this Order.

Date: 7-22-2019 By: SKlebanoff, President
(Person) (Title)
Sumner Hood LLC
By – Sumner Realty Co., a Maryland corporation
By – Steven M. Klebanoff, President

STATE OF MARYLAND
~~Commonwealth of Virginia~~
City/County of Bethesda, Maryland

The foregoing document was signed and acknowledged before me this 22 day of

July, 2019, by Steven Klebanoff who is

President of Sumner Realty Co., the manager of Sumner Hood LLC, on behalf of the company.

[Signature]
Notary Public

Registration No.

My commission expires: **My Commission Expires**
January 22, 2023

Notary seal:

